



FH
[REDACTED]

STATE OF WISCONSIN
Division of Hearings and Appeals

In the Matter of

[REDACTED]
[REDACTED]
[REDACTED]

DECISION

FOP/166826

PRELIMINARY RECITALS

Pursuant to a petition filed June 23, 2015, under Wis. Admin. Code §HA 3.03, to review a decision by the La Crosse County Department of Human Services in regard to FoodShare benefits (FS), a hearing was held on July 8, 2015, by telephone.

The issue for determination is whether the county agency correctly determined that the petitioner was overpaid \$368 in FS for the April through May 2015, period.

There appeared at that time the following persons:

PARTIES IN INTEREST:

Petitioner:

[REDACTED]
[REDACTED]
[REDACTED]

I

Respondent:

Department of Health Services
1 West Wilson Street, Room 651
Madison, Wisconsin 53703

By: Tom Miller, ES Supr.

La Crosse County Department of Human Services
300 N. 4th Street
PO Box 4002
La Crosse, WI 54601

ADMINISTRATIVE LAW JUDGE:

Nancy J. Gagnon
Division of Hearings and Appeals

FINDINGS OF FACT

1. Petitioner (CARES # [REDACTED]) is a resident of La Crosse County.
2. The petitioner received FS as a household of three persons from at least March through May 2015. The household was issued \$186 FS for April 2015, and \$186 for May 2015.

3. On May 27, 2015, a *FoodShare Overpayment Notice* and worksheets were sent to the petitioner, advising that she had been overpaid \$368 in FS for the April – May 2015 period (claim # [REDACTED]). Exhibit 3. The overpayment was due to agency error.
4. The petitioner timely reported that household member Andrew P. was employed. She submitted his appropriate paystubs, which the agency acted upon on March 2, 2015. The agency worker incorrectly calculated his income based on 40 hours of work biweekly, while the paystubs (and reality) showed that he was working 80 hours biweekly. This error resulted in a too-low household income figure, and therefore a too-high FS allotment amount beginning with April. This persisted until May 2015, when the agency realized its error.
5. When the income was entered for household income for the months of April through May, 2015, the unfortunate result was that the household was not financially eligible for any FS during these months.

DISCUSSION

I. AN FS OVERPAYMENT MUST BE RECOVERED, REGARDLESS OF FAULT.

If an FS overpayment occurred during the period described above, the agency must make an effort to recover it. An FS overpayment claim is defined as:

273.18 Claims against households.

(a) *General.* (1) A recipient claim is an amount owed because of:

- (i) ***Benefits that are overpaid*** or
- (ii) Benefits that are trafficked. ...

(3) As a State agency, you must develop a plan for establishing and collecting claims that provides orderly claims processing and results in claims collections ...

(4) The following are responsible for paying a claim:

- (i) Each person who was an adult member of the household when the overpayment or trafficking occurred:

...

(b) *Types of claims.* There are three types of claims:

(1) An Intentional Program violation (IPV) claim is any claim for an overpayment or trafficking resulting from an individual committing an IPV. An IPV is defined in §273.16.

(2) An inadvertent household error claim is any claim for an overpayment resulting from a misunderstanding or unintended error on the part of the household.

(3) An agency error (AE) claim is any claim for an overpayment caused by an action or failure to take action by the State agency. The only exception is an overpayment caused by a household transacting an untampered expired Authorization to Participate (ATP) card .

(c) *Calculating the claim amount* – (1) *Claims not related to trafficking.* (i) As a State agency, you must go back to at least twelve months prior to when you become aware of the overpayment ...

(e) *Initiating collection actions and managing claims.*

(1) *Applicability.* State ***agencies must begin collection action on all claims*** unless the conditions under paragraph (g)(2) of this section apply..

7 C.F.R. §273.18(a)-(e). See also, in accord, *FS Wisconsin Handbook (FSWH)*, 7.3.1.1 (at <http://www.emhandbooks.wisconsin.gov/fsh/fsh.htm>). The above is a long way of saying that when an overpayment occurs, even if caused by agency error, the overpayment must be collected. The agency is limited to going back one year if the overpayment was due to agency error.

II. THE PETITIONER WAS OVERPAID FS FOR THE 4/1/15 – 5/31/15 PERIOD.

Neither the arithmetic of the agency's overpayment determination nor the amount of the petitioner's household income is in dispute. Rather, the petitioner explained that she had provided all requested information to the agency, and that she did nothing wrong. However, as noted above, the agency must collect the overpaid benefits, even if the overpayment was caused by an innocent misunderstanding or mistake. This mandatory recovery is required under federal law, which means that a state official, such as myself and the county agency, must comply with that requirement.

CONCLUSIONS OF LAW

1. The petitioner was overpaid FS from April through May 2015, due to agency error.
2. The county agency is correctly pursuing recovery of that overpayment, pursuant to federal law.

THEREFORE, it is

ORDERED

That the petition is dismissed.

REQUEST FOR A REHEARING

You may request a rehearing if you think this decision is based on a serious mistake in the facts or the law or if you have found new evidence that would change the decision. Your request must be **received within 20 days after the date of this decision**. Late requests cannot be granted.

Send your request for rehearing in writing to the Division of Hearings and Appeals, 5005 University Avenue, Suite 201, Madison, WI 53705-5400 **and** to those identified in this decision as "PARTIES IN INTEREST." Your rehearing request must explain what mistake the Administrative Law Judge made and why it is important or you must describe your new evidence and explain why you did not have it at your first hearing. If your request does not explain these things, it will be denied.

The process for requesting a rehearing may be found at Wis. Stat. § 227.49. A copy of the statutes may be found online or at your local library or courthouse.

APPEAL TO COURT

You may also appeal this decision to Circuit Court in the county where you live. Appeals must be filed with the Court **and** served either personally or by certified mail on the Secretary of the Department of Health Services, 1 West Wilson Street, Room 651, Madison, Wisconsin 53703, **and** on those identified in this decision as "PARTIES IN INTEREST" **no more than 30 days after the date of this decision** or 30 days after a denial of a timely rehearing (if you request one).

The process for Circuit Court Appeals may be found at Wis. Stat. §§ 227.52 and 227.53. A copy of the statutes may be found online or at your local library or courthouse.

Given under my hand at the City of Madison,
Wisconsin, this 9th day of July, 2015

\sNancy J. Gagnon
Administrative Law Judge
Division of Hearings and Appeals



State of Wisconsin\DIVISION OF HEARINGS AND APPEALS

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The preceding decision was sent to the following parties on July 9, 2015.

La Crosse County Department of Human Services
Public Assistance Collection Unit
Division of Health Care Access and Accountability